Case No: C30BS843

Neutral Citation Number: [2017] EWHC 1080 (Ch)
IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION
BRISTOL DISTRICT REGISTRY

Bristol Civil Justice Centre
2 Redcliff Street, Bristol, BS1 6GR

Date: 12/05/2017

Before :

HHJ PAUL MATTHEWS
(sitting as a Judge of the High Court)

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Between :

	Geoffrey Mark Taylor	**Claimant**
	- and -	
	(1) Boyd Alexander Taylor **(2) Maybell Taylor**	**Defendant**

- -
- -

Jonathan Edwards (instructed by **Headleys**) for the **Claimant**
The Defendants appeared in person

Hearing dates: 27 April, 4 May 2017

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Judgment **HHJ Paul Matthews :**

Introduction

1. This is my judgment on an issue about the ownership of land, arising in these proceedings. The proceedings themselves were commenced by claim form dated 10 June 2015. It sought (1) a declaration that a partnership previously carried on between the claimant and the two defendants was dissolved as from 31 May 2013, (2) an order that

the affairs of the partnership be wound up, (3) and order that all necessary accounts and enquiries be taken and made, (4) the appointment of a receiver, and (5) costs.

2. The claim form was accompanied by particulars of claim, alleging that the partnership business had been carried on as from June 2012, and that each of the three partners should be entitled to one third each of the profits, and be liable each for one third of the losses. It was also alleged that the defendants denied this dissolution. In fact, as appears from an amended defence of 31 March 2016 called "Answers Particulars of Claim", these points do not appear to be in dispute, at any rate not now. In particular, the defendants agree that there should be an order that the affairs of the partnership be wound up, that all necessary accounts and enquiries be taken, and even that a receiver be appointed. But they do object to paying the costs of the proceedings as sought.

3. It should be recorded that that is not the original defence filed in this case. In the court file (although not in the bundle provided by the claimant's solicitors) there are earlier versions of the defence. For present purposes, the important point to note is that *the defence* raises a question as to the ownership of the land occupied for the purposes of the business. It claims that this land belongs equally to the claimant and the first defendant. The claim form and the particulars of claim as originally drafted made no allegations as to the ownership of the land. However, an order made by District Judge Exton on 3 February 2017 provided (in part) that on 27 April 2017 the court would determine the question of the ownership of the land, and also whether to order a sale.

The issue for determination

4. At the hearing before me on 27 April 2017, it was agreed that that hearing would be confined to my determining the question of the beneficial ownership of that land. For the avoidance of any doubt, I record here that the question whether there should be a sale was not argued before me, and I am not determining that question now. So far as concerns the statements of case, it was clear that these needed to be amended so as formally to raise the issue of the beneficial ownership of the land. On 4 May 2017 I therefore gave permission for those amendments, but dispensed with re-service.

Procedural matters

5. This claim was commenced in the Chancery District Registry of the High Court in Birmingham. Originally, it was managed there. But, on 18 July 2016, District Judge Salmon transferred the claim to the County Court at Bristol. He did this on the basis that at that stage it appeared to him to be suitable to be tried in the County Court. Whilst that may well have been true at that time, the position now appears to me to be different. In relation to the ownership of the land, some interesting points of law have emerged, and the facts are hotly disputed. Whilst the value of the property concerned is not enormous,

it is not negligible either. I considered that it was right to transfer this matter back to the High Court, but retained in the Bristol District Registry, and on 4 May I so ordered.

6. I heard the matter on 27 April and 4 May 2017. Mr Jonathan Edwards of counsel represented the claimant, and the defendants appeared in person. The evidence was all given on the first day, but there was not enough time to make closing submissions. I heard those on 4 May, and reserved judgment.

Background

7. The land which is the subject of the present dispute is a small hotel and campsite known as the Innis Inn and Campsite, St Austell, Cornwall. On 1 June 2012 the freehold in this land was transferred by the vendors out of a larger registered parcel to the claimant and the first defendant. It is common ground that they are therefore joint tenants at law. The question that I have to decide is what are the beneficial interests in the land. The claimant says he is entitled to a four fifths share. The defendants say that each of the claimant and the first defendant is entitled to a one half share.

8. The partners in this partnership are, unhappily, members of the same family. For convenience, but without intending any disrespect, I shall generally refer to them by their first names. Geoffrey Mark Taylor ("Mark") was formerly married to Wendy, but they were divorced many years ago. They had two children, Boyd and Lucrezia. Lucrezia is married with two children. She gave evidence before me, but is not a partner, and is not directly concerned by this litigation. Boyd is married to Maybell, and they have a daughter Bella. She is now about five years old. Mark, Boyd and Maybell were the three partners in the business. They are now the three parties to this litigation. Mark has a brother, Gerald, who also plays a part in the story.

At the hearing

9. I have already said that the claimant was represented by counsel, instructed by solicitors (although in fact there was no representative of the solicitors present at the hearing) but that the defendants appeared in person. As to the defendants, I record here that neither is a lawyer, and that their knowledge of legal procedure was minimal. Their compliance with court rules and orders was not much better, but I am satisfied that that has occurred through ignorance. The first defendant is plainly not an educated man, and speaks simply and straightforwardly. His wife is a native of El Salvador, and Spanish is her first language. However she is clearly intelligent, and understands and speaks English well, albeit with an accent. Her written English is not quite as good, but it is still possible to understand quite easily what she means. Both of them in their turn addressed me. Each asked questions of other witnesses. I am satisfied that I understood all the points which they wished to make.

10. At the outset, the defendants sought to adduce in evidence seven further documents, not previously disclosed during the proceedings. I numbered them 1 to 7. Apart from document 1 (which the defendants told me they had only found the day before), all of these were accepted to have been in their custody for a couple of years at least. Initially Mr Edwards on behalf of the claimant understandably objected to their admission, as he had only just seen them, and had not then had an opportunity to obtain any instructions. But he made no application for an adjournment. Documents 4 to 7 however are simply copies from the Land Registry of historical entries on the register relevant to the present issue in this case. Having had an opportunity during the day to look at the documents, Mr Edwards for the claimant accepted that realistically he could not properly object to these documents going in. Documents 2 and 3 appeared to have emanated from the claimant's own solicitor. Again they are plainly relevant to the issue before me. And again Mr Edwards accepted that he could not reasonably object to their being admitted either. Document 1 appears to be a letter dated 13 January 2010 addressed to the claimant and the first defendant in relation to an insurance policy. In fact it was not referred to during the hearing, nor relied on by any party or any witness, and I need say no more about it.

11. The hearing of the evidence was hampered slightly by the fact that the claimant solicitors appeared not to have filed a second copy of the bundle for the use by the witness. This meant that witness statements to be put to witnesses had to be identified and photocopied at the time, thus necessitating short adjournments. Only three persons gave evidence. These were the claimant himself, the first defendant and his sister Lucrezia. There was a profound cleavage between the evidence given by the claimant on the one hand, and the first defendant and Lucrezia on the other. In many respects they were diametrically opposed as to what happened. On many points it is not possible for one side to be right and the other merely mistaken in good faith. On these matters one side or the other is lying. I must therefore say something about each of the witnesses.

Assessment of the witnesses

12. The claimant was very fluent and self-confident, almost lackadaisical in giving his evidence. It was evident that he was used to getting his own way, especially in his relations with his son. Despite a criminal conviction for assaulting his daughter-in-law, he made himself out to be the victim of violence himself. He was unrestrained in his criticism of the personal habits and probity of his son and daughter-in-law, the defendants, with whom he had gone into partnership. He made assertions in the same fluent self-confident way as he gave all his evidence, but which, on being probed, were shown to be nonsense. He tried to make assertions plainly inconsistent with the (relatively few) relevant documents.

13. Overall, I did not trust him at all. Indeed, by the end I found his evidence so unreliable that I could not believe anything he said, unless it was confirmed from an independent source. Much of the claimant's evidence was not expressly challenged by the defendants

in asking questions, though of course it was *implicitly* challenged by the evidence given by the first defendant. But having seen and observed the claimant in the witness box, I am afraid that the lack of direct challenge does not make it any more credible.

14. The first defendant, Boyd, gave evidence in a calm, clear and solid manner. But he was not confident reading from documents, and he told me he suffered from dyslexia (a fact confirmed by his sister). He remained respectful of his father in giving his own evidence, even when disagreeing with his father's. He did not raise his voice or attempt to insult Mark. I found his evidence convincing.

15. Mr Edwards argued that Boyd's evidence was inconsistent. He gave as an example Boyd's first saying that he paid for the property at Valletort Terrace himself, and that it belonged to him alone, whereas later he said that the proceeds of each of the properties were rolled over into the next. I have checked my note, and do not find any inconsistency there. Boyd distinguished between the source of the funds for Valletort Terrace (Mark gave him a share of the proceeds of the previous property) and the way in which the acquisition of the other properties had been dealt with (by rolling proceeds of sale of one into another). He was not saying that that applied also to Valletort Terrace.

16. His sister, Lucrezia, gave evidence confidently and clearly. She was plainly torn between her feelings for her father and those for her brother. At certain points, she attempted to explain the behaviour of her father on the basis of certain personal characteristics, though without excusing it. Her evidence was formally independent, but also disinterested. She is married with her own family, but of course she might expect to inherit from her father in due course. However, I detected no attempt on her part to curry favour with him. On the contrary, she mostly supported the defendants' case. I accept her evidence.

Facts found

17. On the basis of the evidence and the written material before me, I find the following facts. After Mark and Wendy were divorced, when Boyd was about 17 years old, Boyd went to live with his father. He found it hard to hold down a job, because of his difficulty with reading and writing. But he was good with his hands, especially in relation to building and renovation. So he worked with his father over a number of years on the renovation of houses, which his father first bought, and then sold on. They worked well together. Although they formed a kind of partnership, Mark dealt with all the paperwork and the finances, and all the money from sales went into Mark's own bank account.

18. The first such house was at Morcott in Leicestershire. That was bought out of Mark's own resources left after his divorce. It took about four years for Mark and Boyd to renovate, and was then sold. Despite his evidence to the contrary, I find that Mark did not pay cash to Boyd for his work. Boyd says he was not paid, and I prefer his evidence

to Mark's. But I do accept that he bought food for Boyd. He may also have bought other things from time to time for Boyd, such as packets of cigarettes, or paid off small debts. And Boyd was able to live in the house rent-free while it was being renovated. Mark bought another house out of the proceeds of sale, at Kilby Bridge. They renovated this house, and turned it into two homes. When they were sold, Mark received the proceeds, and out of them bought another property for himself at Tavistock.

19. But he also gave a share to Boyd. With that money Boyd bought a house in Plymouth, at 2 Valletort Terrace, on 21 July 2003. Boyd paid £115,000, and became sole registered proprietor. He regarded the money paid to him by Mark as due to him for his work on previous projects, and the house as his house alone. Given that Mark had bought a separate house for himself, I consider that belief justified. Boyd lived there while he did it up, and then in June 2005 sold it for £196,500. Boyd paid the money to Mark, because Mark wanted to buy a bigger house to renovate. This was 44 Connaught Avenue, Plymouth, which was acquired for £195,000 on 6 September 2005. This time the renovation plan involved Mark's brother Gerald (Boyd's uncle), and the house was transferred into the names of Boyd, Mark and Gerald. Boyd and Mark did the work on the house. Gerald paid for materials, but did not do any of the work. Boyd was able to live in the house during the renovation, and afterwards in a flat on the top floor, while the seven bedrooms below were rented out by Mark. However, Boyd never received any part of the rents. When Connaught Avenue was sold, Boyd received £100,000, which Mark said was one third of the profit, although Boyd had actually contributed £196,500.

20. By this time Boyd was married to Maybell, who was expecting a child. He wanted to spend the money on buying a home for his family. However, Mark persuaded him instead to invest the money in another project, which was to buy a campsite. In order to persuade him to do so, he promised Boyd one half of the property. Moreover he would have a job on the campsite. On this basis, Boyd allowed his £100,000 to be used in the purchase of a campsite. The first attempt at purchasing a campsite fell through. Mark then changed his mind and wanted to buy a fish and chip shop. This also came to nothing. Finally, Mark found the small hotel and a campsite known as Innis Inn and Campsite, at St Austell in Cornwall.

21. The purchase price was £500,000. Mark retained solicitors to deal with the conveyancing. At the beginning, the correspondence I have seen is between the solicitors and Mark alone, and in third-party correspondence the solicitors' client is stated to be Mark. But from 10 February 2012 the solicitors' clients are stated to be Mark and Boyd jointly. (It is notable that, although in his evidence to me Mark accepted that Boyd was entitled to at least £95,000 from Connaught Avenue – which he says he made up to £100,000 – an attendance note made by their solicitor Mr Langrishe on 10 February 2012, shows that Mark was telling the solicitor that he was making a gift or a loan to Boyd of £100,000.)

22. In a further attendance note, which is undated, but from internal evidence appears to be

later in time, Mr Langrishe asked about the document of transfer. Because the property being acquired was part of an existing registered estate, the form for the Land Registry would be Form TP 1. Mr Langrishe asked how Mark and Boyd were to hold the property, as joint tenants or as tenants in common. He explained the survivorship rules for joint tenants. He recorded in his attendance note that Mark and Boyd were to own the property as joint tenants, although he also stated that this might change "after completion". Mark confirmed in evidence that he never went back to the solicitor to reconsider this question.

23. The reference to joint tenants has to be understood as referring to the beneficial interest. In the context, Mr Langrishe could not have meant to refer to the legal estate, which if there was to be co-ownership would have to be vested in Mark and Boyd as joint tenants, whatever the position in equity. Mr Edwards submitted that the reference to joint tenancy was all about survivorship, and not about the quantity of rights each party took. I disagree. Boyd's evidence was clear, and I accept it. He wanted equality of rights with his father, believed his father was offering it, and agreed it with him.

24. Amongst the exhibits to Mark's witness statement, and immediately following the attendance note just referred to, is a two page document headed "Joint tenancy form". This discusses the concepts of joint tenancy and tenancy in common (in equity, although that is not expressly stated) and explains in layman's terms what are the differences between them and the consequences of choosing one or the other. It is plainly addressed to persons purchasing land together. The document contains a section at the end in which a 'tick box' instruction can be given to the conveyancer. The copy in the exhibits is not completed. The boxes are left blank.

25. Mark exhibited this document to his witness statement. He appears at paragraph 9 of that statement to rely on this document (with others) as showing that he intended that the beneficial interest should be owned in unequal shares. However, in giving evidence before me, Mark said he had never seen this document before, and had no idea where it came from. Nor could he remember any advice being given by his solicitors on this subject. I reject this evidence. It is exactly the kind of document which a conveyancer such as Mr Langrishe would have sent out to his clients to help them make up their minds whether they wanted to buy as equitable joint tenants or tenants in common. I find that it was sent to Mark at least, if not to Mark and Boyd.

26. The Form TP 1 for the purchase of Innis Inn and Campsite was executed on 1 June 2012. Copies of both the executed and the un-executed versions are exhibited to Mark's witness statement. Apart from the insertion of the date and the signatures of the transferors and their witnesses, the documents are identical. Mark and Boyd have not signed the executed version. Mark said he did not sign it because he did not want the transaction to "go through". This was because of the trouble he said he was having with Boyd and Maybell within the first two weeks after moving in on 1 June 2012. In my judgment, this is not only inconsistent with other evidence he gave to me, but also is a

childish attempt to rewrite history. The transaction "went through", to use Mark's words, on 1 June, because that was the day on which the property was transferred to Mark and Boyd, and (as stated in box 9) the purchase money was paid and received. Mark could not have known then what was going to happen afterwards. In any event, it was not necessary for Mark and Boyd to sign the TP 1 in order for it to have legal effect. Their consent to the transaction was demonstrated by paying the money and then registering the transfer to them of the legal title.

27. From the point of view of determining the beneficial interests in the property after the transfer, the most important part of the Form TP 1 is box 11. Box 11 in the form is the box used where the transferee is more than one person, and in which any declaration of trust is to be inserted. In the usual way, I have no doubt that Mr Langrishe as the purchasers' solicitor prepared the TP 1. Certainly there is nothing to indicate otherwise. Both in the draft and the executed versions, the words that have been checked in box 11 by Mr Langrishe are "they are to hold the property on trust for themselves as joint tenants", where "they" refers to the transferees. He would only have done that upon the instructions of his clients. Those instructions appear from the undated attendance note to which I have already referred. Accordingly, on the face of it, the transfer is one by the vendors to Mark and Boyd to hold on trust for themselves as joint tenants.

28. In giving evidence before me, Mark accepted that at the time of the purchase he intended that the property should be conveyed to him and Boyd "50-50". (This of course conflicts with other evidence of Mark, referred to above, that he did not want the transaction to go through at all; but I have rejected that.) Boyd also confirmed that he only went into the transaction on the basis that he would own one half of the property. But Mark said that the promise he made to Boyd was that he would give him one half of the property *only* if he worked hard, and "it worked out". Given the history of the relationship between them, and the circumstances in which Boyd found himself at that time, in my judgment Boyd would never have agreed to invest his money in this project on the basis that he would get half of the property only if "it worked out", let alone on the sole basis of his father's opinion as to whether it had done so or not.

29. Mr Edwards submitted that Mark's evidence was that he intended to obtain 80% of the beneficial interest, and agreed this with Boyd. I agree that (in addition to the evidence, referred to above, that it was to be 50:50) he also gave evidence to that effect, but I reject it. And I reject also the suggestion of any such agreement with Boyd. I prefer Boyd's evidence that they agreed 50:50 (which also accords with what Mark told me elsewhere in evidence).

30. Even if Mark had made a mental reservation attached to his agreement to give Boyd one half of the land, he cannot have articulated this to Mr Langrishe, because the transfer document is absolutely clear, and there is no suggestion of any collateral agreement (which Mr Langrishe as a conveyancing solicitor would have known would have to be in writing) to qualify it. But I do not accept that Mark made any mental reservation of that

kind. There was no need. He was confident in his ability to persuade Boyd to do whatever he wanted. He had done it before, both to Boyd and to his sister Lucrezia (who told me of a field transferred to her by Mark as a gift, which Mark subsequently insisted should be reconveyed to him), and no doubt he thought he could do it again if he wanted to.

31. The unconditional nature of the transfer to Mark and Boyd is confirmed by the second of the seven documents handed up at the beginning of the hearing by the defendants. This is a copy of a completed document dated 19 May 2013 and headed "Notice of severance of joint tenancy". In the document, Mark gives notice to Boyd

> "severing our joint tenancy in equity [of the land in question] now held by ourselves as joint tenancy both law and in equity and henceforth the property shall be held by us as tenants in common in equity in equal shares".

32. Mark confirmed in evidence that it bore his signature. But he said he could not remember it. Boyd also confirmed his signature in signing an acknowledgment of receipt of the notice. His evidence (which I accept) was that it was sent back to Mark's solicitor. (The date of the acknowledgment is given as 28 May 2014, but, since "2014" is typed into the original, I think it must be an error for "2013".) If there was any truth in Mark's story about the transfer being conditional, this notice would be inexplicable.

33. The notice serves another function as well. It demonstrates that, not only at the time of the transfer to Mark and Boyd, but also up until May 2013, Mark's solicitors at least considered that, whatever the respective contributions of Mark and Boyd, they were joint tenants in equity. It then shows that, after May 2013, they were to be equitable tenants in common in equal shares. Mark signed this notice. On the face of it, therefore, he thought this too.

34. In any event, in our system, and particularly where land is concerned, it is not open to one party to make a private condition to a transfer of property which is not communicated to the other party or recorded with appropriate formality. Property affects third parties, and it is therefore the objective visible phenomena of the transaction which must be considered and interpreted, not the innermost workings of one party's mind. Whether this results from an objective theory of construction of contracts and other agreements, or from the application of an estoppel-like principle, it is not necessary now to consider.

35. I accept of course that mistakes and other factors may in some cases vitiate contracts and deeds, and mistake in recording transactions may sometimes justify rectifying the recording document. During his closing submissions on 4 May, Mr Edwards for the first time sought to put forward a case of mistake in relation to signing the notice of severance of joint tenancy. After hearing both sides, I refused his application to amend

Mark's case to make such an allegation, for reasons which I then gave extempore. In summary, these were that this amendment was very late in the day, would require further disclosure and evidence, leading to one further day in court, and would cause the prolongation of stress and inconvenience to the defendants, including lack of closure. I also took into account the comparative weakness of the claimant's argument that there was a mistake (though I accept he gave evidence which could support such an argument, the fact is that the document was clear, was drafted for him by his lawyer, and he accepted that he had signed it), and also the fact that Mr Edwards very fairly accepted that, if one side or another was to be blamed for the lateness of this issue's being raised, it was the claimant's side.

36. Accordingly, for all the above reasons, I find that there was an agreement between Mark and Boyd that they would purchase the property with equal rights, whether that was a beneficial joint tenancy or a beneficial tenancy in common in equal shares.

37. Boyd and Maybell moved to the campsite two months before the completion, to work there and "learn the ropes". They were not paid, but had free accommodation. This meant that they knew how the campsite operated from the moment that they took over. Whenever Lucrezia visited after the completion of the purchase, she found them working at some aspect of the business. Mark on the other hand said they were lazy and always in bed or off on trips away. He said they did not want to work. I reject that. Lucrezia explained that Mark goes to bed early and wakes up at about 4 am. He therefore never saw Boyd and Maybell working late into the night, and of course they slept later than 4 am.

38. Mr Edwards relied on the accounts for the partnership which the partners had signed for the year ending 5 April 2013. In the notes to these accounts, there are statements that Mark and Boyd introduced capital to the partnership which are certainly consistent with the view, and perhaps only explicable on the basis, that the land was being treated as a partnership asset, belonging to Mark and Boyd in the proportions 80:20. However Mr Edwards accepted that it was not the case that the land was a partnership asset, and the accounts were therefore legally wrong. Mr Edwards submitted that nevertheless they cast light on the contributions to the property. Boyd after all signed them. But Boyd's evidence was that the accounts were wrong because all of the sale proceeds of Valletort Terrace went to purchase Connaught Avenue. So his contribution should not have been £100,000 anyway, but at least £196,000. I do not understand this to mean that he accepted the amount of contributions as determinative, but rather to show why the accounts were wrong. Boyd also told me that the accountant who prepared the accounts, no doubt on the instructions of Mark, had said that they did not matter anyway, and it was on that basis that he signed. I accept Boyd's evidence. But in any event the partnership was on a one third each basis, which was not what Mark was arguing for. I consider the accounts of no real assistance in resolving this question. In particular, I do not accept that they show Mark and Boyd originally agreed that Mark was to have 80% of the beneficial interest and Boyd 20%, or alternatively that, after the acquisition at

50:50, they later agreed 80:20 in favour of Mark.

The law

39. I turn to the law. As I have said, the legal estate in the land was vested in Mark and Boyd as joint tenants. If no one sought to argue that the beneficial interest was different, then there would also be a beneficial joint tenancy. Equity would simply follow the law. But in the present case Mark argues that he is entitled to four fifths of the beneficial interest, by reason of what he claims to be his greater contribution to the purchase price. Boyd on the other hand argues that he is entitled to a half of the beneficial interest, because that was what was promised to him and he relied on that, by going into the transaction, allowing the money to which he was entitled to be used, and working (together with his wife) in the hotel and campsite.

40. Strictly speaking, the one half share which Boyd claims is different from a joint tenancy. This is because a person with a one half share (a tenant in common) has an interest which is immediately transmissible on death. It falls into his estate and passes by his will or under the rules of intestacy. On the other hand, a person who is a beneficial joint tenant, although he has the same rights of enjoyment of the property during his life as a tenant in common, runs the risk of dying first. If that happens, his rights accrue to the survivor, do not form part of his estate, and are not transmitted via his will or on intestacy. Of course, a joint tenant also has the potential advantage of gaining the rights of the other if that other dies first. However, in the present case, given that there was a notice of severance of joint tenancy, on its face turning the beneficial joint tenancy (if that is what it was) into a tenancy in common in equal shares, then, assuming that it is effective in law, there is no practical difference for Boyd whether it is a beneficial tenancy in common to begin with, or a joint tenancy which becomes a tenancy in common later. Either way he claims a one half share.

41. Mark's case that he is entitled to four fifths of the beneficial interest depends either upon an agreement to that effect, or upon the presumption of a resulting trust, which arises when a person contributes to the purchase of property in the name of another, or (as here) in his own name and the name of another jointly. As to the former, I have rejected this on the evidence. As to the latter, however, it cannot be too highly stressed that this is merely a *presumption*, and must yield to evidence requiring a different conclusion. In the present case, there are two aspects to this. One is the choice expressed in box 11 of Form TP 1, and subsequently confirmed by the notice of severance of joint tenancy. The other is the agreement between Mark and Boyd, put forward by Boyd, that he would have a one half share in the property if he came into the transaction, bringing his money and working in the business with his wife.

Box 11 of Form TP 1

42. I deal first with the significance of box 11. The selection of the words "they are to hold the property on trust for themselves as joint tenants" in box 11 in my judgment amounts to an express declaration of trust of the land being conveyed. So long as such a declaration is valid and unimpeached, it is conclusive: see Lord Upjohn in *Pettitt v Pettit* [1970] AC 777, 813; Griffiths LJ in *Bernard v Josephs* [1982] Ch 391, 403; *Goodman v Gallant* [1986] Fam 106, CA; *Re Gorman* [1990] 1 WLR 616, 621. Mr Edwards of course accepted this.

43. But Mr Edwards, for Mark, says that in this case the declaration is not valid. He says that the declaration was required to have been evidenced by signed writing, in accordance with section 53(1)(b) of the Law of Property Act 1925. This provides:

> "Subject to the provision hereinafter contained with respect to the creation of interests in land by parol—
> (a) … ;
> (b)a declaration of trust respecting any land or any interest therein must be manifested and proved by some writing signed by some person who is able to declare such trust or by his will … "

44. Mr Edwards submits that only Mark and Boyd were "able to declare" such trusts, and they did not sign the Form TP 1. I accept that they did not sign the form, but I reject the premise. In my judgment, although Mark and Boyd would have been able to declare such trusts once the legal title had been conveyed to them, at the time when the transferors signed the form they were the legal and beneficial owners of the land and well able to declare such trusts. On the face of it, if A conveys to B on trust for C, only A's signature on a declaration of trust is required. Mr Edwards submits that it makes a difference that A is being paid to convey the property. A sale is different, he says, because the effect of the contract is to pass the beneficial interest in the property to the purchaser before completion, subject to the vendor's lien. Once the contract is made, says Mr Edwards, the vendor is no longer able to declare a trust of the land that he is selling. And the vendor cannot declare a trust of his lien in the land, because it disappears on receiving the purchase price.

45. I reject this argument. For one thing, if it were right, it would mean that, from the signing of the contract, A would be holding the land on trust for B. But B would not be intended to hold beneficially. Equity anticipates the conveyance to B on trust for C. So in equity B would be treated as holding his (equitable) interest on trust for C. Even if B does not then "drop out" of the picture (see Lawrence Collins LJ in *Nelson v Greening & Sykes (Builders) Ltd* [2007] EWCA Civ 1358, [57]) A would be holding the legal title ultimately on constructive trust for the intended beneficiary C (see the authorities cited in *Nelson* at [56]). As a constructive trust, it would not need to be evidenced in writing: see Law of Property Act 1925, s 53(2). So, if Mr Edwards were right, the only result would be to bring forward the moment when the intended trust for C arose.

46. But in my judgment this is not the correct way to look at the matter. To the extent that it

is properly to be regarded as a trust at all, the constructive trust arising on a contract to purchase land is simply a form of equitable protection for the purchaser. It depends on the availability of specific performance of the contract. Essentially it is a product of the contract. It anticipates the position on completion, on the footing that the purchaser is ready and willing to complete. If the agreement is that A will convey to B on trust for C, it protects the intended trust where B holds on trust for C against the possibility that A conveys instead to X or Y. The vendor's residual rights (which are in fact substantial) are together referred to as his 'lien'. But this an inapt term, because it is not really a security interest. If the purchaser does not pay the price the vendor may sell elsewhere, free from any claim by the purchaser, and is not liable to account to the purchaser if he sells for more than the purchaser contracted to pay (see *Ex p Hunter* (1801) 6 Ves Jr 94, 97).

47. This special form of constructive trust does not prevent the conveyance by which the vendor transfers the property in fulfilment of his contractual obligation from being a conveyance on sale of the beneficial interest attracting stamp duty *ad valorem* (*Oughtred v IRC* [1960] AC 206, 240). Nor does it mean that the interest of the purchaser, being intended to be a trustee for others cannot be the subject of a charging order under the Charging Orders Act 1979 (*Nelson*). Similarly, in my judgment, the fact that A has contracted to sell the property to B on trust for C does not prevent A from declaring the trust on completion as by his contract he undertook to do. In the present case the vendors were doing what they no doubt had contracted to do, which was to convey as directed by the purchasers. The purchasers' direction was given to them by the purchasers' solicitor, Mr Langrishe, who had taken instructions for that purpose. In drawing up the Form TP 1 and submitting it to the vendors' solicitors, he was giving that direction.

48. Mr Edwards argues that *Re Gorman* (discussed below) is an implicit authority against this view. But, as I read the judgment, the point was not argued, because it did not matter. There was conclusive evidence of the parties' intention, on which they had relied, and so there was a common intention constructive trust. In my judgment, it is not an authority against the view I have expressed. The result is that the property was held from the time of the transfer by Mark and Boyd as joint tenants at law on trust for themselves as joint tenants in equity.

49. Once the beneficial ownership of the land is determined by the documents, it is conclusive in the absence of fraud, mistake or some other vitiating factor: see *Pankhania v Chandegra* [2012] EWCA Civ 1438, [15]-[17], [27]-[28]. Such a factor may lead to the setting aside or rescission of the document or transaction (see Lord Upjohn in *Pettitt v Pettitt* [1970] AC 777, 813), it may lead to the rectification of the document so as correctly to record the intended transaction (see *Wilson v Wilson* [1969] 1 WLR 1470), or it may lead to a finding that the declaration of trust was a sham (see *Hitch v Stone* [2000] EWCA Civ 63; though this category may be only a subset of the second). In the present case, no suggestion has been made that the declaration of trust in box 11 was affected by any vitiating factor, and no claim has been made to set it aside or rectify it. It

must therefore stand.

Signed writing

50. If I were wrong about the law, and the signatures of Mark and Boyd, or at least that of Mark, were necessary, then in my judgment those signatures would be provided by the notice of severance of joint tenancy. This was signed initially by Mark alone, and then subsequently by Boyd. It states that the property was to be held thenceforward by both of them on trust for themselves in equal shares. Under section 53(1)(b) of the Law of Property Act 1925, it is not necessary that a declaration of trust be *made* in writing. It is only necessary that it should be *evidenced* in writing. Accordingly it is possible for an oral declaration of trust of land to be made on one day, and evidenced by signed writing on another. In such a case the oral declaration of trust is rendered enforceable from the beginning.

51. Here the notice of severance is clear evidence, in the form of signed writing, that a declaration of trust was made on 1 June 2012. Mr Edwards accepted that the notice if valid could constitute the relevant signed writing. But, as already mentioned, he made a late attempt to claim that the notice of severance was vitiated by mistake, and therefore could not be relied on for this purpose. However, as stated above, his application to amend his case was refused. Accordingly, the notice of severance stands.

The effect of the notice of severance

52. When the notice to sever the joint tenancy was signed by Mark in 2013, and served upon Boyd, it operated under section 36(2) of the Law of Property Act 1925 to effect a severance, and thereafter the parties held the property in trust for themselves as tenants in common in equal shares. That remains the present position in law.

Common intention constructive trust

53. But, even if I were wrong about all of that, this is a case where there is ample evidence of, and I have found that there was, an agreement between the relevant parties (that is, Mark and Boyd) that they should hold the property equally. Boyd entered into the transaction on the faith of that agreement. I have already considered the relevant evidence above. Accordingly, the presumption of resulting trust is excluded, and a common intention constructive trust takes effect. As I have already pointed out, a constructive trust requires no writing.

54. This can be illustrated by the decision in *Re Gorman* [1990] 1 WLR 616. This was a case

where a husband and wife bought a property as their matrimonial home. They together borrowed two thirds of the price on mortgage (and therefore they are treated as having provided it), and the remaining one third was provided by the wife's father as a gift to her. The transfer to the husband and wife was signed by the transferor but not by them. It provided that they were entitled to the beneficial interest in the property, but gave no greater detail. The court construed the transfer as a whole, and concluded that it was consistent only with a beneficial joint tenancy. Subsequently the husband and the wife divorced, and although the husband was ordered to pay the mortgage instalments, he did not do so, and the wife did so instead. Thereafter the husband was adjudicated bankrupt.

55. His trustee in bankruptcy applied for an order for the sale of the property. At first instance, the judge held that the property belonged to the wife alone, in part because the wife paid all mortgage instalments and therefore had provided the whole of the purchase money. On appeal to the Divisional Court of the Chancery Division of the High Court, this decision was reversed. Vinelott and Mervyn Davies JJ held that a declaration of trust as to the land being conveyed included in the transfer on their joint instructions was admissible as evidence of the intentions of the parties, and therefore the transferees became beneficial joint tenants of the property when it was transferred to them. In essence (though the court did not say this explicitly) the husband entered into the mortgage loan liability and allowed the money so raised to be paid over to the vendors on the basis of the declaration in the transfer.

Subsequent variation of shares

56. Of course, it is possible for the beneficial shares in the property established at the time of the conveyance to be varied subsequently. But this would have to be done in accordance with established rules of law. In the present case one variation has been proved. This is the service by Mark of a notice to sever the beneficial joint tenancy. It has the effect of turning the beneficial joint tenancy into a beneficial tenancy in common in equal shares. If there were to be any further variation of the beneficial interests, such as one under which Mark acquired a four-fifths beneficial interest in the property, then that would have to be either with the agreement of Boyd or by the imposition of some form of constructive trust. Neither can apply on the facts of this case.

57. Mr Edwards says that express agreement *by itself* is sufficient to lead to the imposition of a constructive trust, at least since *Stack v Dowden* [2007] 2 AC 432, HL. In that case (he submitted) there was no sufficient reference in the speeches in the House to detrimental reliance, which previously had been a requirement for a common intention constructive trust. He also supplied me with a copy of *Jones v Kernott* [2012] 1 AC 776, SC. But those cases were cases of domestic residential property conveyed into the names of persons cohabiting as if married, and those facts were duly emphasised by the House of Lords and the Supreme Court: see in particular *Jones* at [25], [53]. This case, of course, is neither of those things.

58. Mr Edwards relied in particular on a passage in the speech of Lord Neuberger in *Stack* at [138]. There he referred to Lord Hoffmann's "elegant characterisation" of the trust arising at acquisition as one "of an ambulatory nature". Nonetheless, said Lord Neuberger, "compelling evidence" would be required before one could infer that the parties later intended a change in the shares in which the beneficial ownership of the home was held.

59. It is true that Lord Neuberger does not refer there to detrimental reliance, or any similar idea. But Lord Neuberger was after all dissenting from the majority decision. All that he was considering at [138] was how one could decide that the parties had changed their minds and reached a new agreement. In my judgment he was not considering whether such an agreement would be sufficient to alter the beneficial interests without more.

60. This view is supported by reference to a passage earlier in his speech. At [106], Lord Neuberger had said

> "it is therefore inappropriate for the law when applied to cases of this sort to depart from the well-established principles laid down over the years".

It is therefore particularly unlikely that he, of all their Lordships, would have been seeking at [138] to change the law in this radical way.

61. Subject to one comment, I say nothing about the test for the imposition of a common intention constructive trust in cases of domestic residential property conveyed to cohabitants. My only observation in passing is that, if there really were no need for detrimental reliance, and intention were everything, the room for the operation of the statutory requirement section 53(1)(b) of the Law of Property Act 1925 for signed writing as evidence would become very small indeed. But, in my judgment, in a case, such as the present, of business property conveyed to business partners, a common intention constructive trust still requires detrimental reliance. There is no suggestion here that, even if (contrary to my finding) there had been an agreement to vary the 50:50 shares in the property, Mark had in any way relied on such an agreement to his detriment. So there is simply no basis for altering the shares of the parties after acquisition, except by reason of the effect of the notice of severance, turning the beneficial joint tenancy into a beneficial tenancy in common in equal shares.

Conclusion

62. In my judgment, the result of all this is that Mark and Boyd now hold the legal estate of the land on trust for themselves as tenants in common in equal shares. Of course, this may be subject to the impact of equitable accounting as a result of the dissolution of the partnership. However, I have heard no argument about that, and therefore say nothing in that respect. When this judgment is handed down, I will give directions for the next steps

in this claim.

63. I cannot leave the case without specifically mentioning the contribution of Mr Edwards. He was unfailingly polite and helpful, and said everything that could properly be said for Mark. He took no point that was not properly arguable, whilst at the same time being scrupulously fair to the defendants as litigants in person, ignorant of the ways of the law. I am very grateful to him.